

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

Amendment of Section 73.202(b))

Table of Allotments)

FM Broadcast Stations)

(Ammon, Idaho))

MB Docket No. 04-427

RM-11127

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To: Office of the Secretary
Attn: Assistant Chief, Audio Division
Media Bureau

Federal Communications Commission
Office of Secretary

COUNTERPROPOSAL

MILLCREEK BROADCASTING, LLC

SIMMONS SLC-LS, LLC

ROCKY MOUNTAIN RADIO NETWORK, INC.

3 POINT MEDIA – COALVILLE, LLC

COLLEGE CREEK BROADCASTING, LLC

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TABLE OF CONTENTS

I.	PRELIMINARY MATTERS.....	5
II.	CONFLICT WITH THE <i>NPRM</i>	7
III.	COMPLIANCE WITH THE COMMISSION'S TECHNICAL RULES	7
A.	STATION KNJQ(FM), MANTI TO KAYSVILLE, UTAH	7
1.	Technical Studies	7
2.	Change in Community of License.....	8
B.	STATION KDWY(FM), DIAMONDVILLE, WYOMING TO OAKLEY, UTAH	12
1.	Technical Studies	13
2.	Change in Community of License.....	13
C.	STATION KLCY-FM, VERNAL, UTAH	14
D.	STATION KRMF(FM), EVANSTON, WYOMING	14
E.	VACANT CHANNEL 293C, SUPERIOR, WYOMING.....	15
F.	STATION KAOX(FM), KEMMERER, WYOMING.....	15
G.	STATION KOSY-FM, SPANISH FORK, UTAH	16
H.	STATION KRAR(FM), BRIGHAM CITY TO HENEFER, UTAH	16
1.	Technical Studies	16
2.	Change in Community of License.....	17
I.	VACANT CHANNEL 295C1, RANGELY, COLORADO	18
J.	VACANT CHANNEL 296C2, HUNTINGTON, UTAH.....	18
K.	VACANT CHANNEL 237C3, WELLINGTON, UTAH.....	19
L.	STATION KENZ(FM), OREM, UTAH TO AMERICAN FORK, UTAH	19
1.	Technical Studies	20
2.	Change in Community of License.....	20
M.	STATION KUDD(FM), ROY TO RANDOLPH, UTAH	24
1.	Technical Studies	24
2.	Change in Community of License.....	24
N.	STATION KCUA(FM), NAPLES, UTAH TO DIAMONDVILLE, WYOMING	25
1.	Technical Studies	25
2.	Change in Community of License.....	26
O.	STATION KUUU(FM), SOUTH JORDAN, UTAH.....	27
P.	STATION KIFX(FM), ROOSEVELT TO NAPLES, UTAH	27
1.	Technical Studies	27
2.	Change in Community of License.....	28
Q.	STATION KXRV(FM), CENTERVILLE, UTAH.....	28
R.	VACANT CHANNEL 290C1, THAYNE, WYOMING.....	29
IV.	CONCLUSION	29

SUMMARY

This Counterproposal is filed on behalf of Millcreek Broadcasting, LLC, Simmons SLC-LS, LLC, Rocky Mountain Radio Network, Inc., 3 Point Media – Coalville, LLC, and College Creek Broadcasting LLC, licensees of, and applicants for, all but five of the Stations implicated in this Counterproposal. The Joint Parties are filing this Counterproposal in response to the *Notice of Proposed Rule Making*, DA 04-3812, released on December 3, 2004, in this proceeding. The Joint Parties propose a number of changes to the FM Table of Allotments which, taken together, will (i) establish first local services in the communities of Kaysville, Utah, Henefer, Utah, and American Fork, Utah (with a combined population of 42,976), (ii) result in a net gain in radio service to 3,170,493 people, and (iii) provide coverage to a 122 sq. km white area consisting of 24 persons. The consent statements of the licensees of the Stations that are not owned by the Joint Parties are attached to this Counterproposal. Finally, in this Counterproposal, the Joint Parties request that the Commission issue Orders to Show Cause to Citicasters Licenses, L.P., the licensee of two Stations implicated in this proposal, to show why their channels should not be changed at their current sites.

This Counterproposal conflicts with the *NPRM* proposal to allot Channel 283A to Ammon, Idaho, due to the proposed allotment of Channel 283C1 to Thayne, Wyoming. Under the FM allotment priorities, the Commission should favor first local services at American Fork, Utah (2000 U.S. Census pop. 21,941), Kaysville, Utah (2000 U.S. Census pop. 20,351) and Henefer, Utah (2000 U.S. Census pop. 684) over a second local service to Ammon, Idaho (2000 U.S. Census pop. 6,187).

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Attn: Assistant Chief, Audio Division
Media Bureau

COUNTERPROPOSAL

Millcreek Broadcasting, LLC ("Millcreek"), licensee of Stations KNJQ(FM), Manti, Utah, KUUU(FM), South Jordan, Utah, and KUDD(FM), Roy, Utah; Simmons SLC-LS, LLC ("Simmons"), licensee of Stations KDWY(FM), Diamondville, Wyoming, KAOX(FM), Kemmerer, Wyoming, and KRAR(FM), Brigham City, Utah; Rocky Mountain Radio Network, Inc. ("Rocky Mountain"), licensee of Station KRMF(FM), Evanston, Wyoming; 3 Point Media – Coalville, LLC ("3 Point"), licensee of Station KCUA(FM), Naples, Utah; and College Creek Broadcasting LLC ("College Creek"), successful bidder and applicant for four vacant auction allotments (together, the "Joint Parties"), by their counsel, hereby submit this counterproposal to the *Notice of Proposed Rule Making*, DA 04-3812 (rel. Dec. 3, 2004) ("*NPRM*") in the above-captioned proceeding. The Joint Parties propose a number of changes to the FM Table of Allotments which, taken together, will provide first local services to three communities and substantially increase service to many listeners. The following amendments to the FM Table of Allotments are requested (listed alphabetically):

Community	Channel	
	Existing	Proposed
Rangely, CO	295C1	257C1
American Fork, UT	----	298C
Brigham City, UT	264C, 295C	264C
Centerville, UT	289C	290C
Henefer, UT	----	296C
Huntington, UT	296C2	237C2
Kaysville, UT	----	286C
Manti, UT	286C	---- ¹
Naples, UT	223C3	253C2
Oakley, UT	268C	268C, 288C
Orem, UT	298C	---- ²
Randolph, UT	272C	272C, 300C
Roosevelt, UT	232C1, 253C2	232C1
Roy, UT	300C	--- ³
South Jordan, UT	223C2	223A
Spanish Fork, UT	293C	294C
Vernal, UT	288C2	245C2
Wellington, UT	237C3	223C3
Diamondville, WY	287C2	223C1
Evanston, WY	252C2, 291C	252C2, 292C
Kemmerer, WY	297C1	230C2
Superior, WY	293C	298C
Thayne, WY	290C1	283C1

In support hereof, the Joint Parties state as follows:

I. PRELIMINARY MATTERS

1. The Joint Parties own all but five of the stations involved in this counterproposal. With respect to the five remaining stations, the Joint Parties have reached agreement with the licensees of three of those stations for the changes proposed herein. The consent statements of the licensees of KLCY-FM, Vernal, Utah, KENZ(FM), Orem, Utah, and KIFX(FM), Roosevelt, Utah, are attached hereto as Exhibit 1. The underlying agreements provide that the Millcreek

¹ Manti will continue to be served by Station KMTI(AM) (650 kHz).

² Orem will continue to be served by NCE Station KOHS(FM) (Channel 219A).

³ Roy will continue to be served by Station KANN(AM) (1120 kHz).

will reimburse the licensees for their expenses in making the changes, and Millcreek hereby states that it will do so.⁴ The Joint Parties request that the Commission issue Orders to Show Cause to Citicasters Licenses, L.P. ("Citicasters"), the licensee of Stations KOSY-FM, Spanish Fork, Utah and KXRV(FM), Centerville, Utah, to show why their channels should not be changed at their current sites as set forth herein. The Joint Parties hereby states that they will reimburse Citicasters, the licensee, for its reasonable expenses in changing channels in accordance with *Circleville, Ohio*, 8 FCC 2d 159 (1967). Thus, this proposal complies with the Commission's policy in *Columbus, Nebraska*, 59 RR 2d 1185 (1986).

2. This counterproposal will establish first local services in the communities of Kaysville, Utah, Henefer, Utah, and American Fork, Utah. The Joint Parties hereby state that they will apply for the respective channels and construct the facilities if their respective applications are granted.

3. This counterproposal requests channel changes for four vacant allotments that were awarded in Auction No. 37 to College Creek.⁵ The vacant allotments at (i) Superior, Wyoming will change from Channel 293C to 298C; (ii) Huntington, Utah will change from Channel 296C2 to 237C2; (iii) Wellington, Utah will change from 237C3 to 223C3; and (iv) Thayne, Wyoming will change from Channel 290C1 to 283C1. In each case, the proposed channel may be substituted regardless of whether College Creek eventually becomes the licensee. Further, as will be demonstrated herein, each of the proposed channel substitutions comply with the spacing requirements to all preferred allocation sites of each applicant for the

⁴ Millcreek is a party to the agreements with each of the affected stations. The Joint Parties have arranged among themselves that Millcreek will pay those expenses, including the expenses of Citicasters.

⁵ On January 21, 2005, the Commission lifted the freeze on the filing of counterproposals to amend the FM Table of Allotments that proposed a change in channel of any vacant allotment scheduled for Auction 37. See DA 05-135.

respective allotments and the reference point coordinates for each vacant allotment, and in each case, the proposed channel affords full protection under the Commission's spacing rules to all licensed and previously proposed facilities.

4. The Joint Parties hereby state that pursuant to Section 1.420(j), they have not paid nor promised to pay, in any agreement, any licensee, permittee or applicant for withdrawing an expression of interest, dismissing an application or forbearing to file an expression of interest or application.

II. CONFLICT WITH THE *NPRM*

5. As indicated in the attached Engineering Statement, this proposal conflicts with the *NPRM* proposal to allot Channel 283A to Ammon, Idaho, due to the proposed allotment of Channel 283C1 to Thayne, Wyoming. The Commission should favor first local services at American Fork, Utah (2000 U.S. Census pop. 21,941), Kaysville, Utah (2000 U.S. Census pop. 20,351) and Henefer, Utah (2000 U.S. Census pop. 684) over a second local service to Ammon, Idaho (2000 U.S. Census pop. 6,187) under its FM priorities.⁶ *See Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

III. COMPLIANCE WITH THE COMMISSION'S TECHNICAL RULES

A. STATION KNJQ(FM), MANTI TO KAYSVILLE, UTAH

1. Technical Studies

6. As indicated in the attached channel study, Exhibit E, Figure 1, Channel 286C can be allotted to Kaysville in compliance with the Commission's spacing rules provided that

⁶ The *NPRM* states that Channel 283A would provide a first local service at Ammon, Idaho. However, Station KUPI(AM) is licensed to Ammon, Idaho. Therefore, the *NPRM* actually proposes a second local service at Ammon.

changes are made at Diamondville, Wyoming and Centerville, Utah.⁷ Those changes, and the other modifications they require in turn, will be discussed below. From the proposed site the station will provide a 70 dBu signal to Kaysville. See Figure 2. Station KNJQ(FM) is licensed to Millcreek, one of the Joint Parties.

2. Change in Community of License

7. In *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License ("Community of License")*, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990), the Commission stated that in order to grant a change in community of license: (1) the proposed use of the channel must be mutually exclusive with its current use; (2) the existing community of license must retain local service; and (3) the proposed arrangement of allotments must be preferred over the existing arrangement under the Commission's allotment priorities.

8. Here, the attached channel study, Figure 1, demonstrates that the proposed allotment of Channel 286C at Kaysville is mutually exclusive with its current allotment at Manti. Manti will retain existing local service, because Station KMTI(AM) will remain licensed to Manti. The provision of first local service Kaysville, Utah (2000 U.S. Census pop. 20,351), along with first local services at American Fork, Utah (2000 U.S. Census pop. 21,941) and Henefer, Utah (2000 U.S. Census pop. 684) under priority (3) is preferred over the retention of a second local service to Manti (2000 Census pop. 3,040) under priority (4). The allotment of Channel 286C to Kaysville will result in a net gain in 60 dBu service to 974,247 people. See Figure 3. The loss area will continue to receive adequate aural service, except for a 35 sq. km area with no population that will only retain one service. See Figure 4. In *Freer, Hebbbronville*,

⁷ The channel study shows a short spacing to Channel 285C0/C2 at Tremonton, Utah. That channel was deleted and allotted to Lyman, Wyoming in Docket No. 02-290.

and Orange Grove, Texas, the Commission found this amount to be de minimis. 19 FCC Rcd 4742 (2004).

9. Kaysville is located within the Ogden-Layton Urbanized Area. Therefore, this relocation implicates the Commission's policy concerning the migration of stations from rural areas to urban areas. See *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988) ("*Tuck*"). Accordingly, a *Tuck* showing is included in order to demonstrate the independence of Kaysville from Ogden and Layton.

10. Under *Tuck*, in making the determination whether to award an urbanized community a first local service preference, the Commission will consider (1) the extent to which the station will provide service to the entire Urbanized Area, (2) the relative populations and proximity of the suburban and central city, and, most importantly, (3) the independence of the suburban community. *Tuck*, 3 FCC Rcd at 5377-78. In this case, from the proposed transmitter site, KNJQ(FM) would place a 70 dBu contour over 100% of the Ogden-Layton Urbanized Area. Kaysville's population (2000 U.S. Census 20,351) is 26% of that of Ogden (2000 U.S. Census 77,226), and 35% of that of Layton (2000 U.S. Census 58,474). Kaysville is located 21.7 kilometers from Ogden and 5.3 kilometers from Layton. These figures exceed those of other suburban communities granted a first local preference. See, e.g., *Old Fort, Fletcher, and Asheville, North Carolina; Surgoinsville, Tennessee, and Augusta, Georgia*, 18 FCC Rcd 12181 (2003) (Fletcher's population is 6.7% of that of Asheville, and Fletcher is located 17 kilometers from Asheville); *Malvern and Bryant, Arkansas*, 14 FCC Rcd 3576 (1999) (Bryant's population is 3% of that of Little Rock, and Bryant is located 20 miles from Little Rock). Nevertheless, the Commission has repeatedly stated that these factors are less important than evidence of independence. See *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995)

(“*Headland*”). The following analysis of the eight *Tuck* factors demonstrates the independence of Kaysville from Ogden and Layton.

(1) ***Extent to which the residents of Kaysville work in Kaysville.*** According to 2000 Census figures, 1,706 of the 8,535 employed individuals in Kaysville, or 20%, work at their place of residence. See Exhibit 2. This percentage exceeds that of other independent communities. See, e.g., Albemarle and Indian Trail, North Carolina, 16 FCC Rcd 13876 (2001) (11.3% of working-age residents worked in community); Coolidge and Gilbert, Arizona, 11 FCC Rcd 3610 (1996) (13% of Gilbert’s working population actually worked in Gilbert).

(2) ***Newspapers and other media that cover Kaysville’s local needs and interests.*** The *Kaysville City Newsletter* is a quarterly newsletter published by the City of Kaysville. It contains information on government services, community events, new government regulations, elections, environmental issues, and safety issues. The *Kaysville City Newsletter* is delivered by mail to all residents of Kaysville, and an electronic version can be viewed online at <www.kaysvillecity.com/news/newsletters/index.htm>. See Exhibit 2.

(3) ***Community leaders and residents perceive Kaysville as being separate from Ogden and Layton.*** Kaysville was settled in 1850 and incorporated in 1868. It was the first city incorporated in Davis County and the 27th in the Utah Territory. The City was one of the first Mormon communities in Utah and is named after William Kay who was one of its first settlers and its first Bishop. Today, Kaysville is one of Utah’s fastest growing cities. See Exhibit 2.

(4) ***Kaysville has its own local government and elected officials.*** The City of Kaysville is governed by a six member City Council. The City Council meets on the first and third Tuesday of each month, and each Council member is responsible for a number of Kaysville's departments, boards and committees. These departments, boards and committees include, Library, Planning, Recreation, Administration, Finance, Community Development, Fire, Parks, Police, Power, and Public Works. The City employs 64 full-time employees, and has its own website located at <www.kaysvillecity.com>. See Exhibit 2.

(5) ***Kaysville has its own zip code.*** The zip code assigned to Kaysville is 84037 and the U.S. Postal Service operates three offices in Kaysville. The phone listings for Kaysville government offices can be found on the Kaysville government website. See Exhibit 2.

(6) ***Kaysville has its own commercial establishments and health facilities.*** Kaysville is home to the Kaysville Area Chamber of Commerce and the Kaysville Business Park, which is a 175 acre business park that was developed by the City to attract businesses. A number of businesses identify with the community by using "Kaysville" in their name, including Kaysville Apartments, Kaysville Family Barber Shop, Kaysville Institute, Kaysville Orthodontics, Kaysville Theatre, Kaysville Veterinary Clinic, Orion Wireless Kaysville, and Wells Fargo Kaysville. Hotels in Kaysville include Far West Motel and Mountain Creek Inn. Restaurants in Kaysville include Arctic Circle Restaurant, Company Grill, Frosted Rock, Pepperbellys, Subway, Taco Maker, B C Chicken, and Jake's. See Exhibit 2.

Health care is provided to the community of Kaysville by a number of group and sole practitioners. Kaysville is also home to a number of religious and community organizations including the Kaysville Bible Church, True Vine Baptist Church, and a number of branches of the Church of Jesus Christ of Latter Day Saints. *See Exhibit 2.*

(7) ***Kaysville is a separate and distinct advertising market from Ogden and Layton.*** The efforts of the City of Kaysville to bring businesses to Kaysville has helped create a separate and distinct advertising market from Ogden and Layton. The City established the Kaysville Business Park and recently completed renovation of Kaysville's Historic Main Street. *See Exhibit 2.*

(8) ***Kaysville has its own schools, library, police department, and fire department.*** The Davis County School District administers the public schools in Kaysville, which include Davis High School, Fairfield Junior High, Kaysville Junior High, Burton Elementary, Columbia Elementary, Creekside Elementary, Kaysville Elementary, Morgan Elementary, Windridge Elementary, and three vocational schools. The Kaysville Public Library is administered by the City of Kaysville and provides traditional library services to the community of Kaysville. Kaysville also has its own police and fire departments. The Kaysville Police Department consists eighteen officers, and the Kaysville Fire Department is a volunteer department with 35 fire fighters. *See Exhibit 2.*

11. Millcreek reiterates that as the licensee of KNJQ(FM), it will apply for Channel 286C to serve Kaysville at a new transmitter site and construct the facility if a permit is granted.

B. STATION KDWY(FM), DIAMONDVILLE, WYOMING TO OAKLEY, UTAH

12. In order to allot Channel 286C to Kaysville, Utah, Station KDWY(FM), Diamondville, Wyoming, must change its channel from 287C2 to 288C and relocate to Oakley, Utah as that community's second local service.

1. Technical Studies

13. As indicated in the attached channel study, Exhibit E, Figure 5, Channel 288C can be allotted to Oakley in compliance with the Commission's spacing rules provided that changes are made at Vernal and Centerville Utah, and Evanston and Diamondville Wyoming. Those changes will be discussed below. From the proposed site the station will provide a 70 dBu signal to Oakley. See Figure 6.

2. Change in Community of License

14. The relocation of KDWY(FM) from Diamondville to Oakley complies with the Commission's policy in *Community of License, supra*. The attached channel study, Figure 5, demonstrates that the proposed allotment of Channel 288C at Oakley is mutually exclusive with the current allotment of Channel 287C1 at Diamondville.⁸ Diamondville will retain existing local service, because, as discussed below, Station KCUA(FM) is changing its community of license from Naples, Utah to Diamondville, Utah. Moreover, Station KIFX(FM) is changing its community of license from Roosevelt to Naples, Utah. Thus, the provision of first local services at American Fork, Utah (2000 U.S. Census pop. 21,941), Kaysville, Utah (2000 U.S. Census pop. 20,351) and Henefer, Utah (2000 U.S. Census pop. 684) under priority (3) is preferred over maintaining a third local service to Roosevelt (2000 Census pop. 4,299) under priority (4). See *Dinosaur, CO et al.*, 19 FCC Rcd 10327 (2004). The allotment of Channel 288C to Oakley will

⁸ As indicated, Station KDWY(FM) has a license for Channel 287C2 and a permit for Channel 287C1. The FM Table of Allotments has been modified to specify Channel 287C1 at Diamondville.

result in a net gain in 60 dBu service to 1,507,973 people. *See* Figure 7. The loss area will continue to receive adequate aural service. *See* Figure 8.

15. Oakley has previously been determined to be qualified as a community by virtue of the allotment of Channel 268C1. *See Oakley, Utah*, 12 FCC Rcd 13388 (1997). Oakley is listed in the 2000 U.S. Census with a population of 948 persons and therefore is presumed to have the status of a community for allotment purposes. *See Arnold and Columbia, California*, 7 FCC Rcd 6302 (1992). Further, Oakley is not located in an Urbanized Area and the proposed contour will not cover over 50% of an Urbanized Area. Simmons reiterates that, as the licensee of KDWY(FM), it will apply for Channel 288C to serve Oakley at a new transmitter site and construct the facility if a permit is granted.

C. STATION KLCY-FM, VERNAL, UTAH

16. In order to allot Channel 288C to Oakley, Station KLCY-FM, Vernal, Utah, must change from Channel 288C2 to Channel 245C2. Channel 245C2 can be allotted to Vernal at the station's current coordinates in compliance with the Commission's spacing rules. *See* Figures 43 and 43(a). The Joint Parties have entered into an agreement with the licensee of KLCY-FM, Ashley Communications, Inc., regarding the change. The licensee's consent to the change in channel is attached hereto in Exhibit 1. Millcreek reiterates that it will reimburse the licensee for its expenses in making the change in channel.

D. STATION KRMF(FM), EVANSTON, WYOMING

17. In order to allot Channel 288C to Oakley, Station KRMF(FM), Evanston, Wyoming, must change from Channel 291C to Channel 292C. Channel 292C can be allotted to Evanston at the station's current coordinates in compliance with the Commission's spacing rules provided that changes are made at Superior, Wyoming and Spanish Fork, Utah. *See* Figure 10. Those changes will be discussed below. Station KRMF(FM) is licensed to Rocky Mountain, one

of the Joint Parties. Rocky Mountain hereby states that it will file an application for the substitute channel and modify the channel.

E. VACANT CHANNEL 293C, SUPERIOR, WYOMING

18. In order to allot Channel 293C to Evanston, vacant Channel 293C, Superior, Wyoming, must change to Channel 298C.⁹ Channel 298C can be allotted to Superior at the allotment's current coordinates in compliance with the Commission's spacing rules provided that a change is made at Kemmerer, Wyoming. *See* Figures 40 and 41. This change will be discussed below.

19. Vacant Channel 293C was awarded in Auction No. 37 to College Creek. However, the proposed channel may be substituted regardless of whether College Creek eventually becomes the licensee. None of the other applicants for Channel 293C at Superior in Auction No. 37 specified preferred allocation that must be protected. College Creek hereby states that it will amend its application to specify the new channel or, if it has a permit, it will file an application for the new channel.

F. STATION KAOX(FM), KEMMERER, WYOMING

20. In order to allot vacant Channel 298C to Superior, Station KAOX(FM), Kemmerer, Wyoming, must change from Channel 297C1 to Channel 230C2.¹⁰ Channel 230C2 can be allotted to Kemmerer with a change in the station's current coordinates in compliance with the Commission's spacing rules. *See* Figure 16. The allotment of Channel 230C2 to Kemmerer will result in a net loss in 60 dBu service to 8,789 people. *See* Figure 17. This small population loss is more than overcome through the substantial gains of this Counterproposal as a

⁹ College Creek has an application pending to change to Channel 293C1. *See* BNPH-20041228AAC.

¹⁰ KAOX(FM) has an application pending to downgrade to Channel 297C2. *See* BPH-20041020AAD.

whole. Station KAOX(FM) is licensed to Simmons, one of the Joint Parties. Simmons hereby states that it will file an application for the change in transmitter site and channel.

G. STATION KOSY-FM, SPANISH FORK, UTAH

21. In order to allot Channel 292C to Evanston, Station KOSY-FM, Spanish Fork, Utah, must change from Channel 293C to Channel 294C. Channel 294C can be allotted to Spanish Fork at the station's current coordinates in compliance with the Commission's spacing rules provided that a change is made at Brigham City, Utah. *See Figure 11.* This change will be discussed below. The Joint Parties request that the Commission issue an Order to Show Cause to Citicasters, the licensee of Station KOSY-FM, Spanish Fork, Utah, to show why KOSY-FM's channel should not be changed at its current site. Millcreek reiterates that it will reimburse the licensee for its reasonable expenses in changing channel in accordance with *Circleville, Ohio, supra.*

H. STATION KRAR(FM), BRIGHAM CITY TO HENEFER, UTAH

22. In order to allot Channel 294C to Spanish Fork, Utah, Station KRAR(FM), Brigham City, Utah, must change its channel from 295C to 296C and relocate to Henefer, Utah as that community's first local service.

1. Technical Studies

23. As indicated in the attached channel study, Exhibit E, Figure 12, Channel 296C can be allotted to Henefer in compliance with the Commission's spacing rules provided that changes are made at Rangely, Colorado, Huntington and Orem, Utah, and Kemmerer, Wyoming. Those changes are discussed herein. From the proposed site the station will provide a 70 dBu signal to Henefer. *See Figure 13.*

2. Change in Community of License

24. The relocation of KRAR from Brigham City to Henefer complies with the Commission's policy in *Community of License, supra*. The attached channel study, Figure 12, demonstrates that the proposed allotment of Channel 296C at Henefer is mutually exclusive with the current allotment of Channel 295C at Brigham City. Brigham City will retain existing local service, because Stations KEGH(FM) and KXOL(AM) will remain licensed to Brigham City. The provision of first local service at Henefer, Utah (2000 U.S. Census pop. 684), as well as first local services at American Fork, Utah (2000 U.S. Census pop. 21,941) and Kaysville, Utah (2000 U.S. Census pop. 20,351), under priority (3) is preferred over the retention of a third local service to Brigham City (2000 Census pop. 17,411) under priority (4). The allotment of Channel 296C to Henefer will result in a net gain in 60 dBu service to 1,003,322 people. *See Figure 14.* The loss area will continue to receive adequate aural service. *See Figure 15.*

25. Henefer is not located in an Urbanized Area and the proposed 70 dBu contour of KRAR(FM) will not encompass over 50% of any Urbanized Area. Therefore, this relocation does not implicate the Commission's policy regarding the migration of stations into urban areas. *See Tuck, supra.*

26. Henefer enjoys the attributes that the Commission traditionally associates with a community. Henefer is listed in the 2000 U.S. Census with a population of 684 persons and therefore is presumed to have the status of a community for allotment purposes. *See Arnold and Columbia, California, supra.*

27. Henefer, located in Summit County, is a farming community on the banks of the Weber River. The Town of Henefer was first settled in 1859 by James and Williams Hennefer. The Town of Henefer sponsors an annual July 4th Celebration, and a Winter Basketball

Tournament, and Henefer is one of the communities on the Mormon Trail. The current Mayor of Henefer is Jim Rees. The Town of Henefer has its own fire department and it is home to a branch of the Church of Jesus Christ of Latter Day Saints. The zip code assigned to Henefer is 84033 and the U.S. Postal Service operates an office in Henefer. *See Exhibit 3.*

28. Simmons reiterates that as the licensee of KRAR(FM), it will apply for Channel 296C to serve Henefer at a new transmitter site and construct the facility if a permit is granted.

I. VACANT CHANNEL 295C1, RANGELY, COLORADO

29. In order to allot Channel 296C to Henefer, vacant Channel 295C1, Rangely, Colorado must change to Channel 257C1. Channel 257C1 can be allotted to Rangely at a new transmitter site in compliance with the Commission's spacing rules. *See Figure 29.* At this site, a 70 dBu contour will be placed over Rangely. *See Figure 30.* The allotment of Channel 257C1 to Rangely will result in a net gain in 60 dBu service to 1,146 people. *See Figure 31.*

J. VACANT CHANNEL 296C2, HUNTINGTON, UTAH

30. In order to allot Channel 296C to Henefer, vacant Channel 296C2, Huntington, Utah, must change to Channel 237C2. Channel 237C2 can be allotted to Huntington at the allotment's current coordinates in compliance with the Commission's spacing rules provided that a change is made at Wellington, Utah.¹¹ *See Figures 18, 18(a), and 19.* This change will be discussed below.

31. Vacant Channel 296C2 was awarded in Auction No. 37 to College Creek. However, the proposed channel may be substituted regardless of whether College Creek eventually becomes the licensee. Further, the proposed channel affords full protection under the Commission's spacing rules to all facilities proposed for Channel 296C2 at Huntington in

¹¹ The channel study shows a short spacing to a Channel 237C3 at Castle Dale, Utah. That channel was changed to Channel 271C3 in Docket No. 02-14.

Auction No. 37. *See* Figures 18, 18(a), and 19. College Creek hereby states that it will amend its application to specify the new channel or, if it has a permit, it will file an application for the new channel.

K. VACANT CHANNEL 237C3, WELLINGTON, UTAH

32. In order to allot vacant Channel 237C2 to Huntington, vacant Channel 237C3, Wellington, Utah, must change to Channel 223C3.¹² Channel 223C3 can be allotted to Wellington at the allotment's current coordinates in compliance with the Commission's spacing rules, provided Station KCUA(FM), Naples, Utah is reallocated to Diamondville, Utah as discussed below, and a change is made at South Jordan, Utah, as discussed below. *See* Figures 20 and 21.

33. Vacant Channel 237C3 was awarded in Auction No. 37 to College Creek. However, the proposed channel may be substituted regardless of whether College Creek eventually becomes the licensee. Further, none of the other applicants for Channel 237C3 at Wellington in Auction No. 37 specified preferred allocation that must be protected. College Creek hereby states that it will amend its application to specify the new channel or, if it has a permit, it will file an application for the new channel.

L. STATION KENZ(FM), OREM, UTAH TO AMERICAN FORK, UTAH

34. In order to allot Channel 296C to Henefer, Utah, Channel 298C must be deleted at Orem, Utah. Citadel Broadcasting Company, licensee of Station KENZ(FM), Channel 298C, Orem, Utah, has agreed to relocate the Station to American Fork, Utah as that community's first local service. *See* Exhibit 1.

¹² College Creek has an application pending to change to Channel 237A. *See* BNPH-20041227ACJ.

1. Technical Studies

35. As indicated in the attached channel study, Exhibit E, Figure 32, Channel 298C can be allotted to American Fork in compliance with the Commission's spacing rules provided that changes are made for Station KAOX(FM) at Kemmerer, Wyoming, as previously discussed, and for Station KUDD(FM) at Roy, Utah as discussed herein. From the proposed site the station will provide a 70 dBu signal to American Fork. *See* Figure 33.

2. Change in Community of License

36. The relocation of KENZ(FM) from Orem to American Fork complies with the Commission's policy in *Community of License, supra*. The attached channel study, Figure 32, demonstrates that the proposed allotment of Channel 298C at American Fork is mutually exclusive with the current allotment of Channel 298C at Orem. Orem will retain existing local service, because Station KOHS(FM) will remain licensed to Orem. The provision of first local service at American Fork, Utah (2000 U.S. Census pop. 21,941), as well as first local services at Kaysville, Utah (2000 U.S. Census pop. 20,351) and Henefer, Utah (2000 U.S. Census pop. 684) under priority (3) is preferred over the retention of a second local service to Orem (2000 Census pop. 84,324) under priority (4). The allotment of Channel 298C to American Fork will result in a net gain in 60 dBu service to 237,251 people. *See* Figure 34. The loss area will continue to receive adequate aural service. *See* Figure 35.

37. Both Orem and American Fork are located within the Provo-Orem Urbanized Area. Therefore, this relocation does not implicate the Commission's policy concerning the migration of stations from rural areas to urban areas. *See Boulder and Lafayette, Colorado*, 11 FCC Rcd 3632 (1996) (granting a proposal to reallocate a channel from one community in an Urbanized Area to another community in same Urbanized Area without a *Tuck* showing); *East*

Los Angeles, Long Beach and Frazier Park, California, 10 FCC Rcd 2864 (1995) (stating that the concern with migration to Urbanized Areas does not exist when a proposal involves reallocating a channel from one community in an Urbanized Area to another community in same Urbanized Area). Nevertheless, a *Tuck* showing is provided.

38. In this case, from the proposed transmitter site, KENZ(FM) would place a 70 dBu contour over 86% of the Provo-Orem Urbanized Area. American Fork's population (2000 U.S. Census 21,941) is 21% of that of Provo (2000 U.S. Census 105,166), and 26% of that of Orem (2000 U.S. Census 84,324). American Fork is located 19.1 kilometers from Provo and 12.5 kilometers from Orem. These figures exceed those of other suburban communities granted a first local preference. *See, e.g., Old Fort, Fletcher, and Asheville, North Carolina; Surgoinsville, Tennessee, and Augusta, Georgia*, 18 FCC Rcd 12181 (2003) (Fletcher's population is 6.7% of that of Asheville, and Fletcher is located 17 kilometers from Asheville); *Malvern and Bryant, Arkansas*, 14 FCC Rcd 3576 (1999) (Bryant's population is 3% of that of Little Rock, and Bryant is located 20 miles from Little Rock). Nevertheless, the Commission has repeatedly stated that these factors are less important than evidence of independence. *See Headland, supra*. The following analysis of the eight *Tuck* factors demonstrates the independence of American Fork from Provo and Orem.

(1) *Extent to which the residents of American Fork work in American Fork.*

According to 2000 Census figures, 2,746 of the 8,946 employed individuals in American Fork, or 31%, work at their place of residence. *See Exhibit 4*. This percentage exceeds that of other independent communities. *See, e.g., Albemarle and Indian Trail, North Carolina*, 16 FCC Rcd 13876 (2001) (11.3% of working-age residents worked in

community); *Coolidge and Gilbert, Arizona*, 11 FCC Rcd 3610 (1996) (13% of Gilbert's working population actually worked in Gilbert).

(2) ***Newspapers and other media that cover American Fork's local needs and interests.*** The *American Fork Citizen* is the community's weekly paper published by North County Newspapers. It contains sections on local government, local schools, local businesses, local recreation, local entertainment, and local sports. The *American Fork Citizen* also contains obituaries, classifieds, and editorials. See Exhibit 4.

(3) ***Community leaders and residents perceive American Fork as being separate from Provo and Orem.*** American Fork is located in Utah County and is named after the river that it is located on. It was settled by Mormon pioneers in 1850 and incorporated in 1853. American Fork was originally settled as an agricultural community, but as its population expanded many industrial companies located in American Fork. Today, American Fork is home to the Utah Valley Business Park, which is where companies such as Dentrax Dental Systems, Twin Labs, and Symantec have located. The American Fork website touts American Fork as tenderly balancing the small-town it was founded on with big-city job opportunities. See Exhibit 4.

(4) ***American Fork has its own local government and elected officials.*** The City of American Fork is governed by a mayor and a five-member City Council. The City Council meets on the second and fourth Tuesday of each month, and each Council member is responsible for a number of committees. American Fork also has a City Operator, Library Director, Treasurer, Web Master, Recorder, Engineer, Recreation Director, and City Attorney. The City of American Fork's departments include, Ambulance, Arts, Building Inspection, Cemetery, Fire, Library, Parks, Planning, Police,

Public Works, Recreation, Streets, Utilities, and Water. The City has its own website located at <www.afcity.com>. See Exhibit 4.

(5) *American Fork has its own zip code.* The zip code assigned to American Fork is 84003 and the U.S. Postal Service operates five offices in American Fork. The phone listings for American Fork government offices can be found on the American Fork government website. See Exhibit 4.

(6) *American Fork has its own commercial establishments and health facilities.* American Fork is home to the American Fork Chamber of Commerce, the Utah Valley Business Park, and hundreds of commercial establishments. A number of businesses identify with the community by using "American Fork" in their name, including American Fork Storage, American Fork Clinic, American Fork Dry Cleaning, American Fork Shoe Repair, American Fork Taco Time, American Fork Vision Center, and Bank of American Fork. See Exhibit 4.

American Fork is home to the American Fork Hospital. Health care is also provided to the community of American Fork by a number of group and sole practitioners. American Fork is also home to a number of religious and community organizations, including American Fork Tabernacle, Calvary Church, a number of branches of the Church of Jesus Christ of Latter Day Saints, Rotary Club, Lions Club, Kiwanis Club, and Veterans of Foreign Wars. See Exhibit 4.

(7) *American Fork is a separate and distinct advertising market from Orem and Provo.* The *American Fork Citizen* provides the businesses of American Fork with a place to advertise to the residents of American Fork without relying on the Orem and Provo advertising markets. See Exhibit 4.

(8) ***American Fork has its own schools, library, police department, and fire department.*** The Alpine School District administers the public schools in American Fork. American Fork currently has seven elementary schools, two junior high schools, and two high schools. The American Fork Public Library is administered by the City of American Fork and provides traditional library services to the community of American Fork. American Fork also has its own police, ambulance, and fire departments. *See Exhibit 4.*

Citadel has furnished a statement indicating that as the licensee of KENZ(FM), it will apply for Channel 298C to serve American Fork at a new transmitter site and construct the facility if a permit is granted. *See Exhibit 1.*

M. STATION KUDD(FM), ROY TO RANDOLPH, UTAH

39. In order to allot Channel 298C to American Fork, Utah, Station KUDD(FM), Roy, Utah, must change its community of license to Randolph, Utah as that community's second local service.

1. Technical Studies

40. As indicated in the attached channel study, Exhibit E, Figure 36, Channel 300C can be allotted to Randolph in compliance with the Commission's spacing provided that a change is made at Kemmerer, Wyoming as discussed herein. From the proposed site the station will provide a 70 dBu signal to Randolph. *See Figure 37.*

2. Change in Community of License

41. The relocation of KUDD(FM) from Roy to Randolph complies with the Commission's policy in *Community of License, supra*. The attached channel study, Figure 36, demonstrates that the proposed allotment of Channel 300C at Randolph is mutually exclusive with the current allotment of Channel 300C at Roy. Roy will retain existing local service,

because Station KANN(AM) will remain licensed to Roy. The provision of first local services at American Fork, Utah (2000 U.S. Census pop. 21,941), Kaysville, Utah (2000 U.S. Census pop. 20,351) and Henefer, Utah (2000 U.S. Census pop. 684) under priority (3) is preferred over the retention of a second local service to Roy (2000 Census pop. 32,885) under priority (4). The allotment of Channel 300C to Randolph will result in a net gain in 60 dBu service to 109,369 people. *See* Figure 38. This population loss is more than overcome through the substantial gains of this Counterproposal as a whole. The loss area will continue to receive adequate aural service. *See* Figure 39.

42. Randolph has previously been determined to be qualified as a community by virtue of the allotment of Channel 272A. *See Randolph, Utah*, 12 FCC Rcd 8311 (1997). Randolph is listed in the 2000 U.S. Census with a population of 483 persons and therefore is presumed to have the status of a community for allotment purposes. *See Arnold and Columbia, California, supra*. Millcreek reiterates that, as the licensee of KUDD(FM), it will apply for Channel 300C to serve Randolph and construct the facility if a permit is granted.

N. STATION KCUA(FM), NAPLES, UTAH TO DIAMONDVILLE, WYOMING

43. In order to avoid depriving Diamondville, Wyoming, of its only local service, Station KCUA(FM), Naples, Utah proposes to change its community to Diamondville, Wyoming.

1. Technical Studies

44. As indicated in the attached channel study, Exhibit E, Figure 22, Channel 223C1 can be allotted to Diamondville in compliance with the Commission's spacing rules provided